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TIN BACKGROUND BRIEFING PAPER

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HUMAN RIGHTS SITUATION IN TIBET

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The Human Rights Situation in Tibet - An Overview

Robert Barnett
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The question of human rights in Tibet can be divided into five categories: the Chinese view; individual rights; economic rights; rights as a people; environmental rights.

1. The Chinese position.

Beijing maintains consistently that there are no problems of human rights in Tibet, and that human rights have nothing to do with protests and unrest in Tibet. It regards all these protests as fomented by outside interferers or people with 'political motives' who wish to destroy the 'unity of the motherland'.

It says that it was only the pre-1950 'serf-owning' Tibetan Government which abused human rights, and it describes alleged individual abuses of this period in great detail. Beijing claims that all human rights problems were ended by the 'Peaceful Liberation' of Tibet by the PLA in 1950, and that the problem of human rights became irrelevant with the implementation of the 'Democratic Reforms' of 1959.

It admits to 'suffering' caused by mistakes made during the Cultural Revolution (1966-1976), but points to the subsequent versions of the Chinese Constitution which guarantee freedom of religion and certain other individual rights. Like most socialist and developing states, it regards individual human rights as secondary to economic welfare, and insists that Tibetans are becoming wealthier and happier.

Beijing is firmly opposed to any questioning about its human rights practices and has consistently refused permission for independent fact-finding missions to visit Tibet or to attend political trials. Although there was a brief change of position in 1988, it has now reverted to regarding all international concern about the human rights situation in China or Tibet as "interference in China's internal affairs".

2. Rights of the Individual

These rights are enshrined in the first twenty articles of the Universal Declaration of Human Rights, and include the rights to life, to freedom from torture, to a fair trial, and to freedom of thought and opinion. They also include the right to peaceful assembly, the right to travel, and the right to information. There is an extensive body of evidence from independent sources which shows that none of these can be said to exist fully in Tibet.

2.1 The right to life

The right to life has been violated on a number of occasions, particularly when members of the security forces have shot directly into crowds of Tibetans holding peaceful demonstrations. On one recent occasion in Lhasa - October 1st 1987 - demonstrators had started to throw stones at police who had beaten up protestors, but on three other occasions - March 5th 1988, December 10th 1988 and March 5-7th 1989 - police starting shooting into the crowd without any provocation, and without

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any warning. Despite various Chinese allegations, which have subsequently been withdrawn, there is no evidence of any demonstrators using or having firearms in any protest.

The number killed by police shooting over the last two and a half years varies from an official figure of about 20 to a Tibetan figure of about 300. Independent sources estimate that around 75 Tibetans were killed in the three days when the army began its 13-month occupation of Lhasa in March 1989; later, an unnamed Chinese official told a Hong Kong paper that the correct figure was 253.

At least two Tibetans are believed to have died from torture whilst in custody since 1987, and the Chinese Government admitted in April 1990 that in China as a whole there had been a number of deaths resulting from torture. On 18th May 1990 the Government announced that two Tibetans had been sentenced to death with immediate effect for trying to escape from a prison in Lhasa. There are allegations of large numbers of secret executions of political prisoners, but no evidence exists to confirm these.

2.2 The right to freedom from torture.

There is overwhelming evidence of the torture of Tibetans detained on suspicion of political crimes since 1987. The evidence is based on approximately fifty first hand accounts given by detainees who were later released. They describe the use of electric batons on the body and sometimes in the mouth, the use of lighted cigarettes to inflict burns, the use of dogs to bite detainees if they move during questioning, and the use of manacles and chains to restrain prisoners for long periods. They also describe the practice of hanging people overnight from the ceiling by ropes attached to their arms tied behind their backs, and the practice of making people stand for hours, and on some occasions even days, without moving.

It is clear from these accounts that the practices are uniform throughout Lhasa's prisons and detention centres, and that the use of torture on political detainees is systematic and extensive. It must therefore be assumed to be authorised or officially condoned.

Special notice should be made of the tortures applied to Buddhist nuns, who have staged about ten entirely peaceful demonstrations in Lhasa since 1987. Detailed accounts have been collected which describe incidents in May and April 1988 when a number of women have been stripped naked, beaten and then violated sexually with electric batons whilst in custody.

In August 1989 a young woman named Gang-lha, a student at Tibet's only University, was taken to hospital after her family persuaded the authorities to release her temporarily from prison. She was said to be partially paralysed by injuries received in custody. She had been detained in March 1989 for putting up a pro-independence poster on the University campus.

2.3 The right to a fair trial

No foreign observers have been allowed to attend trials in Tibet, and there is no evidence to suggest that prisoners get any semblance of a fair hearing under the Chinese legal system.

There is no presumption of innocence in Chinese courts, and it is not clear that defendants are even asked if they are guilty. They would almost certainly be penalised if they denied that they were guilty. Defence lawyers in China exist mainly to plead for lower sentences. In 1987 the Chinese press hailed one Shanghai defence lawyer as the most successful in the city because he had had seven clients acquitted since 1980.

The small percentage of prisoners who are charged and tried are not entitled to a lawyer until seven days before their trial. Most courts in China operate on a system of pre-trial sentencing, where the verdict and sentence is decided by a party official in a closed meeting with the judge some days before the trial. The acquittal rate in China as a whole is less than 2%, and there are no known incidents of political offenders being acquitted.

In Tibet it is estimated unofficially that between two and four thousand people have been detained for

suspected political activities or opinions since 1987. The Government claimed in December 1989 that 167 Tibetans had been tried since March 1989, but has published the sentences passed on less than fifty in the last three years. No Tibetans have yet been found who know of any defendant receiving legal assistance or advice before a trial, and no-one has yet been found who was actually allowed to attend a trial. It is not known if there are any defence lawyers in Tibet; if there are any, they are almost certain to be Chinese and to be employees of the Government.

Detailed interviews with Tibetans who were held in detention in 1988 and 1989 make it clear that all prisoners are held incommunicado - that is, they are not allowed to receive any visits or mail from anyone, including lawyers and relatives. Most of the prisoners are held without charge for a period of between three to nine months, during which time they are tortured, beaten and interrogated. A small percentage are held for a longer period. These prisoners, usually people in positions of influence or responsibility, are formally charged after at least three months, and some of them receive trials before being paraded through the streets and humiliated in public sentencing rallies or 'workside meetings'. Most are sentenced to 'reform through labour'.

The Chinese have also announced that 53 people involved in minor political offences have recently been sentenced to administrative detention. These included in particular nuns who took part in small demonstrations after September 2nd 1989 and schoolchildren who put up posters in their school after March 1989. They have each been sentenced without trial to up to three years 're-education through labour'.

2.4 Rights to opinion, assembly and information

The use of torture and the existence of grossly inadequate legal procedures have been documented in the publications of Amnesty International, Asiawatch, Physicians for Human Rights, the British All-Party Human Rights Group, and other organisations. These practices represent punishments imposed by the Chinese Government on people who express political opinions with which the Government disagrees. In particular, the Government is opposed to criticism of those dogmas enshrined in the Constitution: the supremacy of the socialist system, and the leading role of the Communist Party. It opposes violently any suggestion that Tibet is or was entitled to independence.

Most detainees have been arrested either for demonstrating, speaking or writing about Tibetan independence. Some have been sentenced for criticising Party policies in private, and others for writing letters to the Government criticising its religious policies. One man, Tsering Ngodrup, received a 12 year prison sentence in 1989 for encouraging children to sing songs which were described as 'reactionary'. Others have been arrested for interrupting political education sessions, which are frequent in Tibet, and on December 10th 1988 at least two people were shot dead by police on sight for carrying the forbidden Tibetan flag. Others have been detained for carrying into Tibet books or tapes from abroad which are considered reactionary, and tourists at border posts are regularly searched to ensure they are not carrying out letters, photographs of tapes from Tibetans.

There is therefore no doubt that the rights to opinion, assembly, and freedom of information do not exist in Tibet.

2.5 Religious freedom

China has maintained that, since the "errors" of the Cultural Revolution were corrected, Tibetans have enjoyed the right to freedom of religion. Since 1980 it has certainly become possible again for Tibetans to practice religious customs and to wear Tibetan clothes, and a considerable number of religious buildings are being rebuilt. 98% of Tibet's 5-6,000 monasteries and temples were destroyed in the years 1959-1979, 20% of them before the Cultural Revolution began.

However, Tibetans have complained that the number of people allowed to join monasteries and nunneries is heavily restricted, that appointments within monasteries are manipulated by the authorities, and that in some areas religious and philosophical teaching is prohibited. These and other restrictive practices directly contravene the rights specified in Article 6 (e,f,g,h,i) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

In 1989 restrictions on religious practice as well as on teaching and on admission to monasteries increased significantly, and the authorities in Lhasa made it illegal to carry out certain individual rituals associated with celebration of the Dalai Lama or his birthday, including the Lha-gya (flour-throwing) ritual, and the Sang-sol (Juniper incense burning). Collective ceremonies in temples appear to have become illegal except where official permission has been granted, and the Mon-lam festival, the major religious occasion of the year, was cancelled in 1989 and confined to private ceremonies in 1990 after the authorities became frightened of crowds staging demonstrations during the festivities.

In April 1990 37 monks from Drepung Monastery and 18 from Ganden Monastery were expelled by the authorities, apparently because they were suspected of being politically unreliable. These are two of the three most important monasteries in central Tibet, and those expelled included the leading students and philosophers of the younger generation, causing great concern amongst their colleagues, a large number of whom walked out in sympathy. There are therefore indications that the Government intends to apply a more restrictive policy to religion in Tibet, and in August 1989 a detailed ideological attack on religious liberalism appeared in Tibet's main official newspaper.

2.6 Other restrictions on the rights of the individual

There are a large number of reports of significant restrictions on other areas of life, including the right to travel abroad, and the right to travel within Tibet and to make pilgrimages. It is certain that it is very difficult for Tibetans to get permission to travel outside China, and many hundreds resort to trying to escape across the Himalayas into Nepal, where they are often severely harassed and brutalised by Nepali security officials on the borders. In the six months after March 1989 it is believed that only about twenty Tibetans were given permission to travel abroad.

Serious complaints also exist about restrictions imposed on women, particularly that they are forced to undergo abortions or sterilisations against their will. It is certain that having a third child will lead to extremely heavy fines - the equivalent of about 3 years salary, according to some accounts - despite a Chinese claim that Tibetans and other non-Chinese nationalities in China are not subjected to a birth control policy.

There are a small number of unconfirmed but disturbing reports of birth control teams in remote rural areas forcing all fertile women to undergo abortions and sterilisations, apparently without anaesthetic, aftercare, and without consent. These reports allege the sustained and authorised abuse of a woman's right to decide whether or not to remain fertile, and require immediate investigation by credible independent organisations.

3 Economic and Social Rights

3.1 Economic rights

Economic rights are particularly significant in Tibet because, as an isolated country under foreign military occupation, it is fully exposed to the danger of systematic economic exploitation by the ruling power. This problem of colonial exploitation has become especially pressing in Tibet since the immigration of Chinese settlers into central Tibet began to increase in about 1983.

The mass settlement of Chinese in Eastern Tibet - an area not recognised by the Chinese as being part of Tibet, which to them refers only to the two provinces of central Tibet - began shortly after the PLA took over those areas in 1949. Tibetans are now for the first time in their history in a minority in those regions. It is only more recently that settlers, as opposed to administrators and technicians, have started to arrive in central Tibet, which is less fertile and hospitable than the already colonised lower valleys to the east.

The settlers began to arrive in central Tibetan cities when China reformed its economy so as to encourage small-scale private commercial businesses in the early 1980s. Combined with the opening of the Tibetan capital to tourists and a wide range of official financial incentives for Chinese working in Tibet, this made Lhasa and other cities extremely attractive to Chinese immigrants. The populations of most of Tibet's larger towns are now thought to be mainly Chinese; the official figure for the capital, probably an under-estimate, is that 40% of the inhabitants are already non-Chinese.

This policy, encouraged by the Government through its incentive schemes, has led to a sharp division in social and economic opportunities for Tibetans, making it much harder for them to gain employment, to procure business permits, to control or influence economic development, or to attract investment. In practice this is largely because Chinese commerce and the bureaucracy which controls access to that commerce operate in Chinese language and through a complex system of mutual favours or 'backdoor connections' (called 'guanxi' in Chinese) in which Tibetans can play little part unless they are highly sinicised. This has led to a growing system of separate racial development which in effect resembles the practice of apartheid.

Although the economic reforms of the past decade have benefitted Tibetans involved in the traditional pastoralist economy - selling butter, meat and wool, the latter usually to Chinese or Government middlemen - other improvements in the economy have been to the benefit mainly of Chinese migrants or of the central, Chinese, economy. There is a serious problem of unemployment amongst Tibetans and many say that even in unskilled labouring jobs Chinese people are preferred.

3.2 Discrimination in education

The language issue vastly heightens the inequality, because, despite various laws and policies supposedly promoting the use of Tibetan, Chinese is not used as the official language or as the language of commerce. The problem is continually worsening because the Chinese have imposed an education system in which Tibetan children in all secondary schools are taught entirely in Chinese. At University all subjects except Tibetan language and medicine are also taught in Chinese.

If the children elect to study Tibetan as a second language, they will not be allowed to study English, which is a requirement for many University subjects and which all Chinese pupils study; if they study English, they will not be able to study their own language. In addition, at any one time 5,000 of the best Tibetan schoolchildren are transferred - possibly without choice - to schools in mainland China where they remain for up to seven years. Conversely, less than six Tibetans are known to have been sent by the Government to study in the West.

The employment and educational consequences of these policies are disastrous: they force Tibetans either to become highly sinicised or to become a marginal race of second-class citizens, if not both. Like other colonial regimes, the Chinese invasion has placed Tibetans at an insuperable social and economic disadvantage.

Such practices contravene the spirit of the International Covenant on Economic, Social and Cultural Rights as well as rights laid down in other instruments such as the UN Convention on the Elimination of All Forms of Racial Discrimination, the Declaration against Discrimination in Education, and the Discrimination (Employment and Occupation) Convention.

4. Rights of Tibetans as a People

Fundamentally, the civil, political, economic and social rights which are threatened by the Chinese presence in Tibet are consequences of Tibet's colonial condition as a county under foreign occupation. This condition in itself represents an infringement of basic human rights, in this case an infringement of those rights which are the entitlement of peoples rather than of individuals.

The work of the United Nations, driven forward by the cases of South Africa, Namibia, and Palestine, has evolved a legal understanding of human rights which specifically addresses the rights of peoples. These include the rights of peoples to control their natural resources, and, in theory, their rights to development, with "as a main objective ... the elimination of all forms of foreign economic exploitation in order to enjoy in full the benefits of their national resources" (Declaration on Social Progress and Development, Article 12(c)).

The cornerstone of these rights is the right to self-determination, and this right is expressed in Article

1 of the United Nations Charter and in Article 1 of each of the International Covenants on Human Rights. There is little doubt that from the perspective of the developing world, self-determination is the fundamental right upon which all others depend.

The notion of self-determination, as a reflection of the historical experience of colonisation, focusses on peoples who have a right to sovereign control of their territory. It is applied differently to peoples who are considered as minorities or indigenous peoples legitimately contained within a larger territorial unit. Indigenous peoples and 'minorities' are entitled to preserve their distinctive identities and cultures, and are entitled in international law to the right to autonomy. The legal distinction between indigenous peoples and sovereign peoples is largely historical, and depends upon the extent to which a people has recently exercised practical control and administration within a defined territory.

By any test the Tibetans, like the Baltic States, are clearly not a minority but a people with rights to full sovereignty, as they have exercised territorially defined administrative and military powers as a treaty-making state in the recent past over a lengthy period.

The case of Tibet is complicated by the claim of the Chinese to have an overriding but rarely exercised historical claim to Tibetan territory. Even if that claim were accepted, Tibet would have an inalienable right to de-colonisation. The international community, however, has been reluctant to criticise recently de-colonised powers for themselves colonising other states, although this has clearly happened in East Timor, and, some would say, in Sikkim.

The developments of 1989 have further underlined the significance of the right to self-determination. As a result, the legal standing of the rights of peoples is certain to be strengthened within international law and practice in the near future. Legally, it will become much more difficult for colonising nations to ignore the claims of annexed or occupied states such as Tibet.

The Chinese claim that Tibet already practices effective self-rule as an autonomous region within the Chinese state. This claim has not been accepted by any western Government, and is not in any case legally tenable since there has been no independent test of the people's will to relinquish their rights to self-determination by joining the Chinese state.

Even if the Tibetans had chosen to accept autonomous status within the state, the Chinese claim that Tibet is already autonomous is invalid, since all local decisions have to be ratified by the Central Government, and all senior decision-making posts are held by Chinese. There is no effective democratic vote, and opposition to the one-party socialist system is illegal. China has so far refused to accept proposals from the Tibetan Government-in-exile that a plebiscite be held under international supervision to test popular consent to Chinese rule over Tibet.

5. Environmental rights.

The Tibetans as a people also have the right to sovereignty over their natural resources. This right is referred to as a fundamental right along with the right to self-determination in Article 1 of the International Covenants on Human Rights, and in other instruments, including the Declaration on Social Progress and Development.

This right is visibly violated on a large scale by the export of timber from Tibetan forests to China. According to several accounts, timber trucks have been seen leaving Eastern Tibet for China on some roads at the rate of fifty an hour. There is extensive mining in Tibet, and the Chinese have identified over 40 minerals in central Tibet which are of potential commercial value. Borax, salt and gold have been mined for some time; a chromite mine has just been opened, and a Chinese official has stated that half the world's uranium supplies exist in the mountains around Lhasa alone.

The unauthorised extraction and export of these and other minerals is an infringement of the Tibetans' rights to sovereignty over their resources. They also infringe other international laws, such as Article 25 of the Declaration on Social Progress and Welfare, which says that protection and conservation of

the environment is a basic right or a main goal which must be addressed. This abuse is particularly severe in the case of the timber-felling, which is on a vast-scale far outstripping re-forestation, and which causes chronic soil erosion and loss of cultivable land, as well as contributing to lower valley flooding.

The siting of nuclear missiles on Tibetan soil can also be seen as an infringement of Tibetans' rights as a people. China tests its nuclear weapons in an area of Xinjinag not far from the northern border of Tibet, and has gone on to build at least three nuclear missile sites in central Tibet. According to Indian intelligence sources these are medium-range ICBMs equipped with nuclear warheads and capable of reaching New Delhi.

In December 1988 the Chinese announced that troops were carrying out 'defensive' chemical warfare exercises in Tibet, presumably a implicit reference to a possible Indian attack. There have been reports of areas of Tibet where grass has been blighted as if by a chemical, and reports of high incidence of birth deformities in areas near suspected dumping sites for nuclear waste. China has signed contracts with West Germany and Switzerland which suggest an interest in reprocessing nuclear fuels and dumping the waste in China, and these allegations are therefore also disturbing enough to warrant further investigation.

Conclusion

Extensive evidence exists of the widespread violation of the human rights of the Tibetan people. Despite a period of reform from 1980-1987 individual, economic, collective and environmental rights in Tibet continue to be subject to officially-sanctioned abuse. There is growing pressure on Tibetans to become sinicised, and a corresponding threat to the survival of Tibetan culture as a distinctive entity. The discussion of these issues is dominated by the presence on the Tibetan plateau of a substantial foreign military force and by a growing population of civilian Chinese.

In order to ensure the protection of human rights in Tibet, as well as the continuation of the Tibetans as a distinctive people, there is a pressing need for independent assessment of the situation in Tibet leading towards a political and long-term resolution of the Sino-Tibetan conflict.

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A selection of relevant international instruments:

Universal Declaration of Human Rights

21.2 public service access

International Covenant on Economic Social and Cultural Rights

I.1 .1 freely pursue economic, social and cultural development,

2 freely dispose of natural resources

II 2.2 without discrimination

3 need not grant rights to non-nationals

II 5.1 development not a right to override other rights?

III 7c promotion subject only to competence

13d higher education

Declaration on the Elimination of All Forms of Intolerance And of Discrimination Based on Religion or Belief (1981)

Art 6 (e,f,g,h,i)religious practice, teaching, funding, appointing and communicating.

Declaration against Discrimination in Education (1960)

Discrimination (Employment and Occupation) Convention (1960)

Art 1.1

The UN Convention on the Elimination of All Forms of Racial Discrimination

Declaration on Social Progress and Welfare

1 self determination, rights over resources

25 environmental protection

27 pollution and nuclear contamination

Declaration on the Granting of Independence to Colonised Peoples (1960)

- end -

